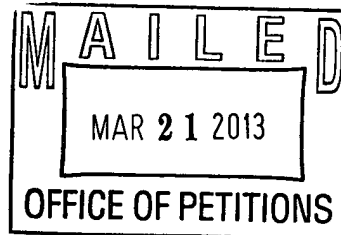




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In re Application of Robert K. Samson :
Application No. 09/766,277 : DECISION ON PETITION
Filed: January 19, 2001 :
Attorney Docket No. 29240-001 :

This is a decision on the Application for Adjustment of Patent Term under 37 C.F.R. § 1.705(b) filed January 11, 2013, which is being treated as a petition under 37 C.F.R. § 1.705(b) requesting the initial determination of patent term adjustment be corrected from one thousand five hundred thirty-nine (1,539) days to one thousand six hundred seventy (1,670) days.

The petition is **granted to the extent indicated herein.**

The Office has updated the Office's PALM database to reflect the correct patent term adjustment determination at the time of the mailing of the Notice of Allowance is 1,411 days. A copy of an updated PALM screen showing the correct determination is enclosed.

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) on October 11, 2012, advising Applicant of a patent term adjustment to date of 1,539 days, which is the sum of 1,217 days of delay under 37 C.F.R. § 1.702(a) ("A Delay") and 984 days of delay under 37 C.F.R. § 1.702(e) ("C Delay") reduced by 662 days of delay under 37 C.F.R. § 1.704 ("Applicant Delay").

The instant petition was timely filed with the issue fee on January 11, 2013. The petition asserts the correct total period of Applicant Delay is 531. The petition asserts the correct initial patent term adjustment is 1,670 days, which is the sum of 1,217 days of A Delay and 984 days of C Delay reduced by 531 days of Applicant Delay.

As will be discussed, a review of the record indicates the correct initial patent term adjustment is 1,411 days, which is the sum of 1,217 days of A Delay and 725 days of C Delay reduced by 531 days of Applicant Delay.

A Delay

The total number of days of A Delay (1,216 days) is not in dispute.

C Delay

A review of the record indicates the correct period of C Delay is 725 days, not 984 days.

The Office recently amended the provisions of 37 C.F.R. § 1.703(e).¹ The amended “version” of the rule is applicable to all cases where the Notice of Allowance is issued on or after September 17, 2012. The Office issued the Notice of Allowance in this case on October 11, 2012. Therefore, the amended version of the rule applies when determining the period of C Delay.

The amended version of 37 C.F.R. § 1.703(e) states,

The period of adjustment under Sec. 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which jurisdiction over the application passes to the Patent Trial and Appeal Board under Sec. 41.35(a) of this chapter and ending on the date of a final decision in favor of the applicant by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

37 C.F.R. § 41.35 states,

Jurisdiction over the proceeding passes to the Board upon the filing of a reply brief under Sec. 41.41 or the expiration of the time in which to file such a reply brief, whichever is earlier.

The number of days beginning on July 26, 2010, the date jurisdiction passed to the Board, and ending July 19, 2012, the date the Board rendered a decision in favor of Applicant, is 725 days. In other words, the correct period of C Delay is 725 days.

Applicant Delay

The Office entered a total reduction in patent term adjustment of 472 (210 + 131 + 131) based on the following events, which took place on or before September 18, 2006:

1. The Office issued a non-final Office action on July 12, 2005;
2. A reply to the Office was not timely filed;
3. The application became abandoned on October 13, 2005;
4. A petition to revive the application and an amendment were filed May 10, 2006;
5. The Office issued a decision granting the petition on June 19, 2006;
6. The Office determined the amendment filed May 10, 2006, is a *bona fide* and incomplete reply;
7. The Office issued a communication on September 11, 2006, requiring the submission of a complete reply; and
8. A complete reply was filed September 18, 2006.

¹ See Revision of Patent Term Adjustment Provisions Relating to Appellate Review, 77 Fed. Reg. 49354 (August 16, 2012).

Applicants assert the events set forth above warrant entry of a *total* reduction in patent term adjustment of 341 days, which is the number of days beginning October 13, 2005, the date the application became abandoned, and ending September 18, 2006, the date a complete reply was filed.

For the reasons set forth in the petition, the Office agrees the events that took place on or before September 18, 2006, warrant entry of a total reduction in patent term adjustment of 341 days, not 427 days.

The Office previously entered a total reduction in patent term adjustment of 190 (71 + 58 + 61) days based on events that took place after September 18, 2006. Applicants do not dispute the Office's calculation of any of the periods of Applicant Delay based on events that took place after September 18, 2006.

In view of the prior discussion, the Office agrees the correct period of Applicant Delay, as of the date the Office issued the Notice of Allowance, is 531 (341 + 190) days.

Conclusion

The total period of A Delay is 1,217 days, the period of C Delay is 975 days, and the total period of Applicant Delay is 531 days; and


The correct patent term adjustment, as of the date the Office issued the Notice of Allowance, is 1,411 days.

The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to the deposit account identified in the petition.

Applicants are reminded that any delays by the Office pursuant to 37 C.F.R. §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 C.F.R. § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 09766277 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 09766277

Application Filing Date	01/19/2001	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	2201
A Delays	1217	PTO Manual Adjustment	-128
B Delays	0	Applicant Delay (APPL)	662
C Delays	984	Total PTA (days)	1411

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
111	03/19/2013		P028	Adjustment of PTA Calculation by PTO		128	0
102	10/11/2012		MN/=.	Mail Notice of Allowance			0
101	10/09/2012		OAR	Office Action Review			0
100	10/09/2012		OAR	Office Action Review			0
99	10/09/2012		DVER	Document Verification			0
98	09/21/2012		OAR	Office Action Review			0
97	09/21/2012		OAR	Office Action Review			0
96	09/21/2012		ACRE	Allowed Case Returned to the Examiner for Clerical Processing			0
95	09/21/2012		N/=.	Notice of Allowance Data Verification Completed			0
94	09/21/2012		DOCK	Case Docketed to Examiner In GAU			0
93	09/21/2012		DVER	Document Verification			0
92	09/20/2012		EX.R	Reasons for Allowance			0
91	09/20/2012		CNTA	Allowability Notice			0
87	07/19/2012	11/09/2009	MAPDR	Mail BPAI Decision on Appeal - Reversed	284		65
86	07/19/2012		APDR	BPAI Decision - Examiner Reversed			0
84	09/08/2010		AP_DK_M	Docketing Notice Mailed to Appellant			0
83	09/07/2010		APAS	Assignment of Appeal Number			0
82	08/31/2010		APWD	Appeal Awaiting BPAI Docketing			0
81	08/27/2010		MRBNE	Mail Reply Brief Noted by Examiner			0
80	08/26/2010		RBNE	Reply Brief Noted by Examiner			0
79	08/04/2010		FWDX	Date Forwarded to Examiner			0
78	07/26/2010		APRB	Reply Brief Filed			0
77	06/01/2010		PACC	Exam. Ans. Review Complete			0
76	05/25/2010		MAPEA	Mail Examiner's Answer			0
75	05/24/2010		APEA	Examiner's Answer to Appeal Brief			0
74	03/19/2010		APBR	Appeal Brief Review Complete			0
73	03/19/2010		FWDX	Date Forwarded to Examiner			0
72	03/08/2010		AP.B	Appeal Brief Filed			0
71	03/08/2010		XT/G	Request for Extension of Time - Granted			0
70	02/02/2010		DOCK	Case Docketed to Examiner In GAU			0
69	12/07/2009		MAPCP	Mail Appeals conf. Proceed to BPAI			0
67	12/04/2009		APCP	Pre-Appeals Conference Decision - Proceed to BPAI			0
66	11/09/2009		AP.C	Request for Pre-Appeal Conference Filed			0
65	11/09/2009	09/09/2009	N/AP	Notice of Appeal Filed		61	63
64	11/09/2009		XT/G	Request for Extension of Time - Granted			0
63	06/09/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
62	06/08/2009		CTFR	Final Rejection			0
61	04/06/2009		FWDX	Date Forwarded to Examiner			0
60	03/05/2009	01/06/2009	A...	Response after Non-Final Action		58	58
59	03/05/2009		XT/G	Request for Extension of Time - Granted			0
58	10/06/2008	09/30/2008	MCTNF	Mail Non-Final Rejection	6		55
57	09/30/2008		CTNF	Non-Final Rejection			0
56	07/16/2008		FWDX	Date Forwarded to Examiner			0
55	05/30/2008		ELC.	Response to Election / Restriction Filed			0
54	04/30/2008		MCTRS	Mail Restriction Requirement			0
53	04/28/2008		CTRS	Restriction/Election Requirement			0
52	02/20/2008		FWDX	Date Forwarded to Examiner			0
49	02/05/2008		DOCK	Case Docketed to Examiner In GAU			0
51	01/10/2008	10/31/2007	A...	Response after Non-Final Action		71	47
50	01/10/2008		XT/G	Request for Extension of Time - Granted			0
48	10/09/2007		DOCK	Case Docketed to Examiner In GAU			0
47	07/31/2007		MCTNF	Mail Non-Final Rejection			0
46	07/23/2007		CTNF	Non-Final Rejection			0
45	05/08/2007		FWDX	Date Forwarded to Examiner			0
44	05/02/2007		ELC.	Response to Election / Restriction Filed			0

43	04/05/2007	MCTRS	Mall Restriction Requirement		0
42	04/02/2007	CTRS	Restriction/Election Requirement		0
41	01/26/2007	FWDX	Date Forwarded to Examiner		0
40	01/09/2007	ELC	Response to Election / Restriction Filed		0
39	12/15/2006	MCTRS	Mall Restriction Requirement		0
38	12/11/2006	CTRS	Restriction/Election Requirement		0
37	09/28/2006	FWDX	Date Forwarded to Examiner		0
36	09/18/2006	05/10/2006 A...	Response after Non-Final Action	131	31
35	09/11/2006	NINA	Mall Notice of Informal or Non-Responsive Amendment		0
34	09/05/2006	MNRAB	Mall Notice of Rescinded Abandonment		0
33	06/30/2006	DOCK	Case Docketed to Examiner in GAU		0
32	06/24/2006	FWDX	Date Forwarded to Examiner		0
28	06/24/2006	NRAB	Notice of Rescinded Abandonment in TCs		0
27	06/19/2006	02/08/2006 MPREV	Mall-Petition to Revive Application - Granted	131	25
31.1	05/10/2006	A.I.	Informal or Non-Responsive Amendment after Examiner Action		0
31	05/10/2006	10/12/2005 A...	Response after Non-Final Action	210	21
30	05/10/2006	XT/G	Request for Extension of Time - Granted		0
26	05/10/2006	PET.	Petition Entered		0
25	02/08/2006	MABN2	Mall Abandonment for Failure to Respond to Office Action		0
24	02/04/2006	ABN2	Aband. for Failure to Respond to O. A.		0
23	01/03/2006	C.AD	Correspondence Address Change		0
22	01/03/2006	PA..	Change In Power of Attorney (May Include Associate POA)		0
21	07/12/2005	03/19/2002 MCTNF	Mall Non-Final Rejection	1211	0.5
20	06/27/2005	CTNF	Non-Final Rejection		0
19	05/08/2005	DOCK	Case Docketed to Examiner in GAU		0
18	01/24/2005	DOCK	Case Docketed to Examiner in GAU		0
17	10/20/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete		0
14	08/09/2004	C.ADB	Correspondence Address Change		0
13	03/29/2004	DOCK	Case Docketed to Examiner in GAU		0
12	04/23/2002	DOCK	Case Docketed to Examiner in GAU		0
11	11/15/2001	DOCK	Case Docketed to Examiner in GAU		0
10	11/11/2001	DOCK	Case Docketed to Examiner in GAU		0
9	11/07/2001	DOCK	Case Docketed to Examiner in GAU		0
7	03/23/2001	DOCK	Case Docketed to Examiner in GAU		0
6	03/15/2001	DOCK	Case Docketed to Examiner in GAU		0
5	03/12/2001	OIPE	Application Dispatched from OIPE		0
4	03/07/2001	C.AD	Correspondence Address Change		0
3	03/05/2001	C.AD	Correspondence Address Change		0
2	02/08/2001	SCAN	IFW Scan & PACR Auto Security Review		0
16	01/19/2001	RCAP	Reference capture on IDS		0
15.7	01/19/2001	M844	Information Disclosure Statement (IDS) Filed		0
15	01/19/2001	WIDS	Information Disclosure Statement (IDS) Filed		0
1	01/19/2001	IEXX	Initial Exam Team nn		0
0.5	01/19/2001	EFILE	Filing date		0

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